



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 173

[Docket No. PHMSA-2019-0030 (HM-215P)]

RIN 2137-AF46

Hazardous Materials: Harmonization with International Standards; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is correcting a final rule that was published in the Federal Register on July 26, 2022. The final rule was published to maintain alignment with international regulations and standards by adopting various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements.

DATES: This correction is effective August 25, 2022.

FOR FURTHER INFORMATION CONTACT: Candace Casey, Standards and Rulemaking, Steven Andrews, Standards and Rulemaking, or Aaron Wiener, International Program, at (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background and Need for Technical Correction

On July 26, 2022, PHMSA published a final rule in the Federal Register entitled “Hazardous Materials: Harmonization with International Standards.”¹ In the final rule, the instructions for the revision of § 173.27(c) did not include the words “introductory text” and thus as written the amendatory instruction 18 to § 173.27 inadvertently removed paragraphs (i) and (ii) to paragraph (c)(2). The publication of this final rule correction is needed to ensure that § 173.27—which is effective August 25, 2022—continues to read as intended by revising introductory text to paragraph (c)(2) and restoring paragraphs (i) and (ii).

II. Regulatory Analyses and Notices

A. Statutory/Legal Authority

Statutory authority for this notice’s technical corrections to the final rule, as with the final rule itself, is provided by the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). The Secretary delegated the authority granted in the Federal hazardous materials transportation law to the PHMSA Administrator at 49 CFR 197(b).

PHMSA finds it has good cause to make those clarification and technical corrections without notice and comment pursuant to Section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the textual alterations herein consist of a technical correction to the amendatory instruction 18 to § 173.27 which inadvertently removed paragraphs (i) and (ii) to paragraph (c)(2). The publication of this final rule correction is needed to ensure that § 173.27 continues to read as intended by revising introductory text to paragraph (c)(2) and restoring paragraphs (i) and (ii); this technical correction makes no substantive changes to the final rule but merely facilitate its implementation by restoring the regulatory text. Because the final rule is the product of an extensive administrative record with numerous opportunities—

¹ 87 FR 44944 (July 26, 2022).

including through written comments—for public comment, PHMSA finds that additional comment on the technical corrections herein is unnecessary.

The August 25, 2022, effective date of the revisions contained in this notice is authorized under both Section 553(d)(1) and (3) of the APA. Section 553(d)(1) provides that a rule should take effect “not less than 30 days” after publication in the Federal Register except for “a substantive rule which grants or recognizes an exemption or relieves a restriction,” while Section 553(d)(3) allows for earlier effectiveness for good cause found by the agency and published within the rule. 5 U.S.C. 553(d)(1), (3). “The purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” Omnipoint Corp. v. F.C.C., 78 F.3d 620, 630 (D.C. Cir. 1996). Since this final rule has not yet taken effect, the impact on affected parties is minimal and such parties will not be adversely impacted by the shortened period before the technical correction becomes effective. The technical correction of § 173.27 reinstates the intended language of the regulations that was inadvertently deleted by the final rule and, in accordance with 5 U.S.C. 553(d)(1), is effective August 25, 2022. Moreover, PHMSA finds that good cause under Section 553(d)(3) supports making the revisions effective August 25, 2022, because the technical correction contained in this notice is entirely consistent with the final rule—which itself was published in July 2022—and helps promote timely compliance with the final rule’s requirements before its August 25, 2022, effective date.

B. *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This notice has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 (“Regulatory Planning and Review”) and DOT Order 2100.6A (“Rulemaking and Guidance Procedures”); therefore, this notice has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. PHMSA finds that the technical corrections herein (in all respects consistent with the final rule) neither impose incremental compliance costs nor adversely affect safety. Overall,

PHMSA expects any impacts on the expected costs and benefits of the final rule will be negligible.

C. *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency head certifies that a rulemaking will not have a significant economic impact on a substantial number of small entities including small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”)² requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to “thoroughly review draft rules to assess and take appropriate account of the potential impact” of the rules on small businesses, governmental jurisdictions, and small organizations. DOT posts its implementing guidance on a dedicated webpage.³

This final rule was developed in accordance with Executive Order 13272 and with DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered. This final rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. It applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical manufacturers, users, and suppliers, packaging manufacturers, distributors, and training companies. As discussed at length in the

² 67 FR 53461 (Aug. 16, 2002).

³ DOT, “Rulemaking Requirements Related to Small Entities,” <https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities> (last accessed June 17, 2021).

regulatory impact analysis (RIA) that accompanied the final rule and was posted in the rulemaking docket, the amendments in this rule should result in net cost savings that will ease the regulatory compliance burden for those and other entities engaged in domestic and international commerce, including trans-border shipments within North America. Additionally, the changes in this final rule will relieve U.S. companies—including small entities competing in foreign markets—from the burden of complying with a dual system of regulations. Therefore, PHMSA expects that these amendments will not, if adopted, have a significant economic impact on a substantial number of small entities. Because the technical correction herein will impose no new incremental compliance costs, PHMSA understands the analysis in that RIA remains unchanged.

D. *Paperwork Reduction Act*

The technical corrections in this notice impose no new or revised information collection requirements beyond those discussed in the final rule.

E. *Unfunded Mandates Reform Act of 1995*

PHMSA analyzed the technical corrections in this notice under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 et seq.) and determined that the technical corrections to the final rule herein do not impose enforceable duties on state, local, or tribal governments or on the private sector of \$100 million or more, adjusted for inflation, in any one year. PHMSA prepared an analysis of the UMRA considerations in the final RIA for the final rule, which is available in the docket for the rulemaking. Because the technical corrections herein will impose no new incremental compliance costs, PHMSA understands the analysis in that UMRA discussion for the final rule remains unchanged.

F. *National Environmental Policy Act*

The National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) requires federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. PHMSA analyzed the final rule in accordance with

NEPA, implementing Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT implementing policies (DOT Order 5610.1C, “Procedures for Considering Environmental Impacts”) and determined the final rule would have not significantly impact on the human environment. The technical corrections to the final rule in this notice have no effect on PHMSA’s earlier NEPA analysis as they are consistent, and merely facilitate compliance with, the final rule.

G. *Privacy Act Statement*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

H. *Executive Order 13132 (Federalism)*

PHMSA has analyzed this notice in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”).⁴ The technical corrections herein are consistent with, and merely facilitate compliance with, the final rule, and do not have any substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government beyond what was accounted for in the final rule. It does not contain any provision that imposes any substantial direct compliance costs on state and local governments, nor any new provision that preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.⁵

I. *Executive Order 12898*

DOT Order 5610.2C (“Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) and Executive Orders 12898

⁴ 64 FR 43255 (Aug. 10, 1999).

⁵ Moreover, PHMSA determined that the final rule did not impose substantial direct compliance costs on State and local governments.

(“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”),⁶ 13985 (“Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”),⁷ 13990 (“Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis”),⁸ and 14008 (“Tackling the Climate Crisis at Home and Abroad”)⁹ require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects of their programs, policies, and activities on minority populations, low-income populations, and other underserved and disadvantaged communities.

PHMSA evaluated the final rule under the above Executive Orders and DOT Order 5610.2C and did not expect the final rule to cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations, and communities. The final rule was facially neutral and national in scope; it was neither directed toward a particular population, region, or community, nor was it expected to adversely impact any particular population, region, or community. Since PHMSA did not expect the final rule to adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect the technical corrections herein to involve disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

J. *Executive Order 13175*

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”)¹⁰ and

⁶ 59 FR 7629 (Feb. 11, 1994).

⁷ 86 FR 7009 (Jan. 20, 2021).

⁸ 86 FR 7037 (Jan. 20, 2021).

⁹ 86 FR 7619 (Feb. 1, 2021).

¹⁰ 65 FR 67249 (Nov. 6, 2000).

DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of the technical revisions have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

K. *Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”),¹¹ agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The technical corrections to the final rule in this notice do not impact international trade.

¹¹ 77 FR 26413 (May 4, 2012).

L. *National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. The final rule involved multiple voluntary consensus standards which were discussed at length in the discussion on § 171.7.¹² The technical corrections herein do not invoke any voluntary consensus standards, so the National Technology Transfer and Advancement Act of 1995 is not applicable here.

In FR Doc, 2022-15358 appearing on page 44944 in the *Federal Register* of Tuesday, July 26, 2022, the following correction is made:

§ 173.27 [Corrected]

1. On page 44991, in the third column, in part 173, in amendment 18., the instruction “In § 173.27, revise paragraph (c)(2), add paragraph (f) introductory text, and revise paragraph (f)(1), tables 1 and 2 to paragraph (f), and the heading to table 3 to paragraph (f) to read as follows:” is corrected to read “In § 173.27, revise paragraph (c)(2) introductory text, add paragraph (f) introductory text, and revise paragraph (f)(1), tables 1 and 2 to paragraph (f), and the heading to table 3 to paragraph (f) to read as follows:”.

Issued in Washington, DC, on August 10, 2022, under authority delegated in 49 CFR 1.97.

Tristan H. Brown

Deputy Administrator,

Pipeline and Hazardous Materials Safety Administration

[FR Doc. 2022-17525 Filed: 8/15/2022 8:45 am; Publication Date: 8/16/2022]

¹² 87 FR 44948 (July 26, 2022).